

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 20th day of November, 2007.

CASE NO. 04-0102-T-GI

FRONTIER COMMUNICATIONS OF WEST VIRGINIA; VERIZON WEST VIRGINIA INC.; ARMSTRONG TELEPHONE COMPANY; ARMSTRONG TELEPHONE COMPANY- NORTHERN DIVISION; HARDY TELECOMMUNICATIONS INC.; SPRUCE KNOB SENECA ROCKS TELEPHONE INC.; WAR TELECOMMUNICATIONS COMPANY; and WEST SIDE TELECOMMUNICATIONS

General investigation into the provision of Data Base Management Services and into who pays the costs of such services.

COMMISSION ORDER

INTRODUCTION

This Order approves Verizon West Virginia, Inc.'s (Verizon-WV) revised tariff filing proposing to provide enhanced 911 data base management services statewide (DBMS), waives the necessity of filing a full *Tariff Rule 42* Exhibit in support of its proposed tariff, approves Verizon-WV's proposed tariff filing after revision, clarifies that enhanced 911 DBMS are a competitive service offering, allows for the provision of statewide, averaged E911 rates, and requires Verizon-WV to make an unbundled rate offering - all in the interest of public safety and welfare.

BACKGROUND

Factual Background

Enhanced 911 (E911) services allow the transmission of the name, telephone number and physical location of the person making an emergency call to a public safety answering point (PSAP), commonly known as a "911 Call Center."

Verizon-WV has offered E911 services in a bundled package containing all components of E911 services at uniform rates throughout its service territory since 1994. Initially, Verizon-WV's E911 monthly rate was \$85 per thousand (\$85/1000) access lines. This rate was adopted by

Citizens Telecommunications Company of West Virginia, Inc., dba Frontier Communications of West Virginia (Frontier) in its West Virginia service territory. In 2001, Verizon-WV increased its monthly E911 rate to \$110 per thousand (\$110/1000) access lines to pay for the upgrade of facilities necessary to handle wireless calls. Once again, Frontier adopted Verizon-WV's rate. Verizon-WV currently provides E911 service to 42 PSAPs operating in 45 West Virginia counties and Frontier provides E911 service to 10 PSAPs in the State's remaining counties. Frontier's service territory is predominantly rural and includes Hardy, Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, and Webster Counties.

With the passage of the Telecom Act in 1996, the Federal Communications Commission (FCC) established two phases to allow E911 information to be transmitted to PSAPs for wireless calls. During Phase I, equipment is to be upgraded to provide for the transmission of the wireless caller's telephone number (Automatic Numbering Information or ANI). During Phase II, the physical location of the wireless caller is to be identified (Automatic Location Information or ALI). All counties served by Verizon-WV are Phase I and II compliant.

PSAPs in those counties served by Frontier have been paying the same higher rate as Verizon-WV; however, they have not been receiving the same service. With the exception of Mercer County, no Frontier county can identify the name, number or location of calls from wireless phones. The same is true for calls to PSAPs from customers of competitive local exchange carriers (CLECs) and calls from customers using Voice over Internet Protocol (VoIP). PSAPs in the Frontier counties currently lack access to E911 DBMS and selective routing facilities that are necessary to provide full E911 service.

Procedural Background

On January 28, 2004, the Staff of the Commission (Staff) filed a petition to initiate a general investigation into the provision of DBMS for E911 services. The petition was filed as a result of a settlement reached in Case No. 03-1188-T-T, *Citizens Telecommunications Company of West Virginia dba Frontier Communications of West Virginia*.

In the 2003 *Citizens* case, Frontier, an incumbent local exchange carrier (ILEC), filed a tariff seeking Commission approval to establish a monthly rate of \$210 per thousand (\$210/1000) access lines for managing the DBMS used for E911 services, including the provision of ANI and ALI services. As the *Citizens* case proceeded, the parties disagreed on what the law required, on who should bear DBMS costs, and on whether an ILEC is the only entity that could reasonably provide DBMS. The parties recommended that the Commission initiate a general investigation to explore the issues from a statewide perspective, considering the effect of multiple CLECs, wireless carriers, and other telecommunications providers on the ability of the PSAPs to provide DBMS.

Task Force Recommendations, Initial Interventions and Related Filings

On June 1, 2004, the Commission granted the Staff's petition for a general investigation and ordered the filing of a proposed procedural schedule.

On June 16, 2004, the West Virginia E911 Council (E911 Council) filed a petition to intervene in this proceeding. On July 1, 2004, Washington/Baltimore Cellular Limited Partnership dba Cingular Wireless, LLC (Cingular) filed a petition to intervene. Also on July 1, 2004, Staff filed its Further Staff Memorandum.

On August 10, 2004, the Commission issued a Procedural Order establishing a procedural schedule in this proceeding. On September 27, 2004, Staff requested that the established procedural schedule be suspended and that a Task Force be established to investigate the issues and make recommendations to the Commission. On October 12, 2004, the Commission issued an order establishing the Task Force and requiring that the Task Force file a final report on or before March 31, 2005.

After two extensions of time, the Task Force, comprised of telecommunications carriers, PSAPs, and Staff, filed its Final Report, including a proposed Verizon-WV E911 Tariff on January 6, 2006. Essentially, the Task Force Report recommended that: (1) the Commission direct a full financial analysis of the proposed Verizon-WV's E911 DBMS tariff rates and of the cost information supplied to Verizon-WV by the independent ILECs; (2) a public hearing be held no later than April 2006 to review the audit results and to take comments of interested parties; (3) public notice of the hearing be provided to all ILECs, CLECs, West Virginia wireless carriers and county commissions; (4) Verizon-WV be granted the authority to serve outside its normal service area; and (5) the independent ILECs be required to modify their tariffs regarding the provision of E911 service.

By Order entered on February 7, 2006, the Commission directed Staff to conduct a complete financial analysis of the proposed Verizon-WV E911 DBMS tariff rates and the cost information supplied to Verizon-WV by the independent ILECs. Staff was ordered to file its report and recommendations on or before April 4, 2006. On March 31, 2006, Staff filed motions to extend the due date of Staff's Financial Report and to approve the Verizon E911 Tariff as emergency interim rates, subject to refund. At that time, Staff had initiated the financial analysis as ordered. Additional information was required by Staff and discovery had been initiated to obtain the data necessary for Staff to complete its Report.

On April 3, 2006, Verizon-WV filed a response in opposition to Staff's recommendation that the proposed Verizon-WV E911 DBMS tariff be approved immediately on an emergency interim basis, subject to refund. The Commission, by Order entered on April 7, 2006, deferred ruling on Staff's motion for approval of Verizon-WV's proposed E911 DBMS Tariff on an emergency interim rate basis, but extended the deadline for the filing of Staff's Financial Report to June 5, 2006. On April 10, 2006, Verizon-WV filed a more detailed opposition to Staff's motion for approval of interim rates. Verizon-WV challenged the jurisdiction of the Commission to order it

to provide E911 DBMS outside its service territory. Verizon-WV also argued that it would not be financially responsible for assuming the cost of implementing such a statewide E911 DBMS offering without assurances of final approval.

On April 10, 2006, Metro Emergency Operations Center of Kanawha County (Kanawha Metro) also filed a petition to intervene in this proceeding, and on April 14, 2006, Kanawha Metro filed a response in opposition to the Staff motion for interim rates. In support of its opposition, Kanawha Metro argued that: (1) Verizon-WV's proposed tariff would violate the statutory right of each West Virginia county to implement its own E911 service; and (2) the plan was discriminatory in that it was not based primarily upon the costs of providing E911 DBMS and would create a subsidy flow from some counties to others.

On April 11, 2006, Frontier filed a response in opposition to the Staff motion for interim rate approval and asserted that it would be inappropriate to require major reconfiguration of the existing E911 network prior to final approval of all associated rates and charges.

On May 22, 2006, the County Commission of Jefferson County, West Virginia (Jefferson County) petitioned to intervene. Jefferson County requested that the Commission approve the proposed Verizon-WV E911 DBMS tariff prior to December 21, 2006. Jefferson County asserted that Motorola's technical support for Jefferson County's Customer Premise Equipment (CPE) would end at 11:59 p.m., on December 31, 2006. Because of the age of the Jefferson County CPE, the equipment regularly malfunctions. Jefferson County argued that it is essential for the Commission to provide both interim and final relief at the earliest possible date.

On June 8, 2006, Staff again requested that it be granted an extension of time to file the Staff Financial Report. Staff asserted that discovery was still proceeding and that not all of the information necessary for the Staff Report had been received. On June 19, 2006, the Commission entered an Order: (1) denying the motion of Staff to implement emergency interim rates; (2) granting the motions of Kanawha Metro and Jefferson County to intervene; and (3) extending the due date of the Staff Financial Report until August 4, 2006.

On June 21, 2006, the Commission received a letter from the County Commission of Tucker County, West Virginia (Tucker County). The letter stated that in 2005, Tucker County had purchased E911 equipment, but could not provide E911 services to its residents because of limitations in the service provided by Frontier. Tucker County objected to having to pay the same rate for E911 services as the counties in which E911 DBMS are available. Tucker County urged the Commission to act expeditiously.

On August 4, 2006, Staff filed its Financial Report and recommendation. An error in this Report was corrected by a subsequent filing on August 8, 2006. The Report presented E911 DBMS rates for both Verizon-WV and Frontier. Staff asserted that both sets of rates were cost-based. Frontier's cost-based rate per month was higher than the Verizon-WV rate of \$210/1000 access lines because Frontier had included certain cost elements not included by Verizon-WV in its rate determination. Although Verizon-WV agreed that the cost elements included by Frontier

were proper, Verizon-WV stated that it would honor its rate as submitted and analyzed by Staff. Although other telephone utilities had submitted tariff rates, Staff indicated that these rates were not cost-based, and Staff recommended that the other telephone utilities use the lower cost-based rates, unless good cause could be shown for using the higher tariff rates. On August 18, 2006, Verizon confirmed by letter that it was committed to the rates as submitted, but only in the context of a settlement of this proceeding.

On November 1, 2006, Staff filed its Fourth Final Joint Staff Memorandum, noting that none of the remaining ILEC's had filed cost evidence in support of their higher E911 DBMS rates and charges. Staff recommended that (1) Verizon-WV immediately update its previously filed E911 DBMS tariff to reflect the rates finally agreed upon through negotiations and (2) the Commission order all ILEC's to file updated E911 DBMS tariffs.

On November 3, 2006, the Commission entered an Order requiring each of the remaining ILECs to either accept the Frontier E911 DBMS tariff rates as their own or to submit their own cost-based rates. Staff was ordered to work with Jefferson County to ameliorate the impact of the loss of technical support if possible. Finally, this matter was set for hearing to be held on January 18, 2007. The Commission ordered public notice of the hearing through a statewide Class I legal publication.

On November 13, 2006, Verizon-WV responded to the Staff Fourth Final Joint Staff Memorandum. Verizon-WV stated its agreement in principle with the Staff recommendations. Verizon asked that it be allowed until December 14, 2006, to file updated E911 DBMS tariff rates, acknowledging that the Commission had entered an order on November 3, 2006, requiring the remaining ILECs to file their own cost-based rates by December 4, 2006, or accept the Frontier rates as their own.

Only Hardy Telecommunications, Inc., and West Side Communications responded to the Commission Order of November 3, 2006. Both ILECs stated that they would accept the Frontier cost-based E911 DBMS rates as their own.

On December 22, 2006, Verizon-WV filed its revised tariff, noting that the rates are based on the assumption that the non-responding ILECs would accept the Frontier rates as their own.

Continuance of the Hearing and Subsequent Efforts to Set a Procedural Schedule

On December 28, 2006, Kanawha Metro filed a motion to continue the hearing scheduled for January 18, 2007. In support of its motion, Kanawha Metro stated that additional time was necessary in order to have a forensic accountant review the cost data submitted in support of the Verizon-WV E911 DBMS proposed tariff rates. Kanawha Metro also indicated that the State 911 Conference was scheduled during the week of the hearing. On January 8, 2007, the Commission granted the Kanawha Metro motion and ordered that public notice of the continuance be made by statewide publication.

On January 10, 2007, the Commission received a letter from the E911 Council indicating that at a special meeting held on January 5, 2007, the E911 Council had unanimously approved a motion to approve the Verizon-WV proposed E911 DBMS tariff on a statewide basis. The motion also argued against continuing the January 18, 2007, hearing. The E911 Council emphasized the emergency nature of the action by indicating that both Mercer and Jefferson Counties needed to update their CPE and would not have emergency maintenance service on their systems after December 31, 2006. The E911 Council also voiced concern that it would take Verizon-WV six to nine months to establish a fully operational system after all final approvals are received.

Similarly, on January 11, 2007, Jefferson County filed its opposition to the continuance of the January 18, 2007 hearing date, arguing that it would actually be more convenient to hold the hearings when the State 911 conference is in session because many parties would be in Charleston. Jefferson County also asserted that any further delay of a case that was already three years old would be detrimental to those counties without E911 service. Jefferson County moved the Commission to rescind its Order dated January 8, 2007, and allow the hearing to take place as previously scheduled. On January 17, 2007, the Commission denied the E911 Council request to hold the January 18, 2007 hearing as previously scheduled. By that same order, the Commission denied the Jefferson County motion to rescind the January 8, 2007 Order.

On January 22, 2007, Kanawha Metro filed a letter by counsel suggesting that the Commission consider the time required for Kanawha Metro to review responses to data requests when rescheduling the hearing date.

On February 12, 2007, Staff, the E911 Council, Jefferson County, Verizon-WV and Frontier filed a joint motion requesting that the Commission establish a new procedural schedule. The week of March 5, 2007 was suggested as a new hearing date. Kanawha Metro opposed that joint motion. Kanawha Metro stated that it had received cost information from Frontier on February 5, 2007, and that meaningful review would require more time than the joint motion would provide.

On March 5, 2007, the Commission entered a Procedural Order which denied the procedural schedule as presented in the February 12, 2007 joint motion. All parties were directed to confer and file a joint proposal for a mutually agreeable procedural schedule.

Kanawha Metro Motion to Dismiss and Responses Thereto

On March 9, 2007, Kanawha Metro filed a motion to dismiss this proceeding for lack of subject matter jurisdiction. Kanawha Metro argued that *W. Va. Code* § 7-1-3cc granted the authority to create enhanced 911 systems to the counties of the State of West Virginia. Kanawha Metro asserted that the Commission was exceeding its jurisdiction by creating a statewide E911 system through the approval of tariff rates and charges for telephone utilities.

Staff filed a response in opposition to the Kanawha Metro motion to dismiss on March 13, 2007. Staff argued that *W. Va. Code* § 24-6-3(a) requires that the Commission develop, adopt and periodically review a comprehensive plan establishing the technical and operational standards to

be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems. County E911 systems must be consistent with the comprehensive plan. If disputes arise among the counties, the Commission is obligated statutorily to centralize any multiple enhanced emergency telephone systems. The Staff also argued that the jurisdiction of the Commission to regulate services and rates of public utilities is clear under controlling authority.

Verizon-WV responded to the Kanawha Metro motion to dismiss for lack of jurisdiction on March 16, 2007. On March 20, 2007, Frontier filed a response in opposition to that same motion.

The Kanawha Metro Motion to Enjoin Ex Parte Communications and the Staff Response

On March 13, 2007, Staff received correspondence from Jimmy Gianato, Director of the West Virginia Division of Homeland Security and Emergency Management, asking that the correspondence be forwarded to the Chairman of the Commission. Mr. Gianato encouraged the Commission to schedule a hearing in this matter at the earliest possible date. This correspondence was docketed in this proceeding as part of the official case file by Staff on March 14, 2007. On March 19, 2007, Kanawha Metro filed a motion for an order enjoining the parties and interested entities/individuals from attempting to communicate *ex parte* with the Commission. Staff opposed the motion as unnecessary, arguing that the protections sought by Kanawha Metro were already afforded by law.

Proposed Hearing Schedules, Additional Filings and Intrado's Petition to Intervene

On March 22, 2007, Kanawha Metro filed a Reply to the Response of Staff and Verizon-WV. Kanawha Metro requested an immediate hearing or ruling on the issue of jurisdiction.

On March 26, 2007, Verizon, the E911 Council, Jefferson County, Frontier, the Consumer Advocate Division of the West Virginia Public Service Commission (CAD) and Cingular filed a jointly proposed procedural schedule. On March 26, 2007, Washington/Baltimore Cellular Limited Partnership dba Cingular Wireless LLC also filed a request that its name as a petitioner to intervene be changed to New Cingular Wireless PCS (New Cingular).

On March 27, 2007, Kanawha Metro filed a proposed procedural schedule that sought to have this matter set for hearing during the week of June 25-30, 2007. This proposed schedule was amended by a filing received on March 28, 2007.

On April 2, 2007, Intrado Communications, Inc.(Intrado) filed a petition to intervene in this proceeding.

Verizon-WV filed a letter with an attached e-mail message on April 2, 2007, to supplement the record regarding the jointly proposed procedural schedule.

On April 12, 2007, Kanawha Metro filed a motion in support of the Intrado intervention, and on April 13, 2007, Kanawha Metro filed a motion to stay this proceeding pending resolution of its

outstanding motion to dismiss. On April 13, 2007, Verizon-WV filed a letter stating that it had no objection to the intervention of Intrado.

Verizon-WV also filed a response on April 23, 2007, to the Kanawha Metro motions to further delay the proceeding.

Revised Verizon Cost Study

On April 4, 2007, Verizon-WV made a revised cost study available to all parties who had signed a proprietary agreement. According to Verizon-WV, the revised study contained certain changes including: (1) corrected mileage calculations and channel termination costs on certain circuit costs; (2) annuity factors applied to net present value expenses in several cost components; (3) power and engineered, furnished and installed (EF&I) factors applied for several cost components; and (4) installation services investments added to certain cost components. The new cost study supported a rate of \$196.14 per thousand (\$196.14/1000) access lines, but Verizon again stated that it would continue to honor its commitment to the initially proposed rate of \$182 per thousand (\$182/1000) access lines and its agreement to phase in the proposed increase.

April 24, 2007 Procedural Schedule

By Order entered on April 24, 2007, the Commission entered an order: (1) setting a procedural schedule; (2) dismissing the Kanawha Metro motion to enjoin ex parte communication as unnecessary; (3) granting the Intrado motion to intervene; and (4) denying the Kanawha Metro motion to stay. The following procedural deadlines were established and statewide public notice as a Class I legal advertisement was required:

Pre-filed direct testimony	To be filed on or before May 31, 2007
Pre-filed rebuttal testimony	To be filed on or before June 11, 2007
Hearing	To be held on June 21-22, 2007
Initial Briefs	To be filed on or before July 20, 2007
Reply Briefs	To be filed on or before July 30, 2007

Because the Commission concluded that a factual hearing would assist it in ruling on the jurisdictional issue, the Commission deferred ruling upon the Kanawha Metro motion to dismiss until after the hearing.

Pre-hearing Motions, Filings and Orders

New Cingular filed a motion on May 29, 2007, for additional time within which to file rebuttal testimony. New Cingular's counsel was scheduled to be out of the United States from June 1, 2007 until June 11, 2007. Additional time beyond June 11, 2007, would be required to review the prepared direct testimony and to prepare rebuttal, if necessary.

On May 31, 2007, Verizon-WV, Frontier, the E911 Council, Kanawha Metro, Intrado, Jefferson County, and Staff filed prepared direct testimony in support of their respective positions.

Verizon-WV prepared direct testimony in panel format. Cingular and CAD filed letters stating that they would not file prepared direct and reserved the right to cross-examine and to file rebuttal testimony.

On May 31, 2007, Verizon-WV filed a motion for a protective order, seeking protection of certain pre-filed direct testimony as proprietary in nature. As required by Commission practice, Verizon filed both public and proprietary versions of its prepared direct testimony. Verizon relied upon the trade secrets exception of the West Virginia Freedom of Information Act, *W. Va. Code* § 29B-1-1, et seq. (WVFOIA), stating that the information provided and identified as proprietary in nature was known to few individuals and that disclosure of the information to competitors would give those competitors a business advantage and harm Verizon-WV.

On June 4, 2007, Intrado filed a letter stating that it had no objection to the additional time requested by Cingular to prepare rebuttal testimony, and on June 7, 2007, Frontier filed a response to the Verizon motion for a protective order.

By Order entered on June 8, 2007, the Commission extended the time deadline for all parties to pre-file rebuttal testimony to June 15, 2007.

On June 11, 2007, Kanawha Metro filed a motion to strike the prepared direct testimony of Verizon-WV on the basis that the testimony in panel format hampered cross-examination. Kanawha Metro requested that Verizon-WV either identify each respondent in its prepared direct testimony or that the testimony be stricken.

The Mercer County Communications Center (Mercer County) filed a letter with the Commission on June 11, 2007. In the letter, Mercer County discussed the Jefferson County petition to intervene and explained that most of the statements made by Jefferson County were true for Mercer County and any other E911 centers using Motorola CPE in counties served by Frontier. Mercer County listed many of the difficulties it had encountered in providing E911 service and expressed concern about further delays in this proceeding. On June 11, 2007, the CAD filed a motion for additional time to respond to the Verizon-WV motion for protective order.

Verizon-WV responded on June 13, 2007, to the Kanawha Metro motion to strike the Verizon-WV prepared direct testimony in panel format. Verizon-WV pointed out that this form of presentation of prepared testimony had been approved by the Commission on multiple occasions since 1998 and requested that it be allowed to proceed using the panel format. Verizon-WV had updated its testimony on June 13, 2007 to identify which of its panel witnesses were sponsoring which portions of its pre-filed direct testimony.

On June 15, 2007, Verizon-WV, Frontier, Kanawha Metro, and Staff filed prepared rebuttal testimony.

The Kanawha Metro motion to strike the testimony of Verizon-WV was denied by Commission order on June 15, 2007. Recognizing that the Commission has previously permitted the use of panel testimony in order to expedite complex hearings, the Commission allowed Verizon-WV to proceed with its panel presentation.

On June 15, 2007, the Commission also granted the CAD motion for an extension of time to file a response to the Verizon May 31, 2007 motion for a protective order. CAD was given until June 19, 2007, to file a response and CAD filed its response in opposition to the Verizon-WV motion for a protective order on June 19, 2007.

On June 15, 2007, CAD filed a letter indicating that CAD had opted not to file rebuttal testimony, and reserving the right to cross-examine at the hearing. On that same date, Frontier informed the Commission by letter that it would not file rebuttal testimony for Randall J. Brockman. On June 15, 2007, Cingular also filed a letter indicating that it would not file rebuttal testimony and reserving the right to cross-examine and present testimony at the hearing.

Evidentiary Hearing

On June 21 and June 22, 2007, the Commission held the hearing as scheduled in the Howard M. Cunningham Hearing Room in the Public Service Commission in Charleston, West Virginia. At the hearing, Intrado filed a motion for *pro hac vice* admission of Rebecca Ballesteros to appear as counsel to Intrado. The Commission granted the motion. Verizon, Frontier, Cingular, the E911 Council, Kanawha Metro, Intrado, Jefferson County, CAD, and Staff appeared by counsel. Seven representatives of the public appeared at the hearing to voice their concerns about the current state of E911 service in West Virginia. They appeared on behalf of seven county PSAPs, including Preston, Summers, Ritchie/Doddridge, Logan, Webster, Tucker and Cabell Counties. Testimony was taken and evidence introduced, at the close of which this matter was submitted for a decision pending completion of a briefing schedule.

Post-hearing Filings and Orders

On June 28, 2007, Verizon-WV filed a motion for interim relief. Verizon-WV sought to maintain the status quo pending final resolution of this matter by seeking the Commission authorization for Verizon to continue charging monthly \$110/1000 line rate for E911 DBMS. Verizon-WV's \$110 rate was scheduled to drop to \$85 on July 1, 2007, in accordance with the Commission Final Order in Case No. 01-1117-T-T, *Verizon West Virginia Inc.*, September 13, 2001. Verizon-WV had refrained from assessing the E911 rate to CLECs and wireless telecommunications providers until this case is finally resolved. Even with the additional revenue from the CLECs and wireless telecommunications providers, the Verizon-WV rate would need to increase to over \$170/1000 lines. Verizon-WV indicated that it would be difficult to implement the required billing system changes to first reduce the rate from \$110 to \$85, then to increase it to a much higher rate within a short period of time. Verizon-WV thus sought authorization to continue to charge the \$110/1000 line rate as currently being billed until this case is finally resolved.

On July 2, 2007, Frontier also filed a motion for interim relief. Despite higher underlying costs, Frontier has been adopting the Verizon-WV rates for the provision of E911 DBMS. For the same reasons provided by Verizon in support of its motion for interim relief, Frontier moved the Commission to authorize Frontier to maintain the status quo insofar as E911 charges are concerned, pending final resolution of this case.

On July 2, 2007, the Commission entered an order approving the Verizon-WV June 28, 2007 motion for interim relief. Verizon-WV was authorized to continue charging monthly \$110/1000 lines for E911 DBMS until the final resolution of this proceeding. The Commission also amended the briefing schedule to extend the time for filing initial briefs until July 26, 2007, with reply briefs due on August 6, 2007. On July 3, 2007, the Commission granted Frontier interim relief on its rates for the same reasons as it granted the Verizon-WV motion for interim relief.

Verizon-WV filed a motion to extend the briefing schedule on July 20, 2007. The motion was granted by Commission Order entered on July 24, 2007. It was ordered that post-hearing Initial Briefs would be filed on August 9, 2007, and post-hearing Reply Briefs would be filed on August 20, 2007.

Post-hearing Initial Briefs, including proposed Commission Orders, were filed by Commission Staff, Verizon-WV, Frontier, Intrado, Kanawha Metro, Jefferson County, and CAD. Post-hearing Reply Briefs were filed by Verizon-WV, Frontier, Intrado, Kanawha Metro, and CAD.

For discussion purposes, references to the exhibits will be by exhibit identification number made at the hearing, such as VZ Exh. 1, p. 1. All references to the transcript will be reflected as follows: Tr. Vol. . pp.

DISCUSSION

As part of this proceeding the Commission reviewed the pre-filed and direct and rebuttal testimonies, observed the witnesses presented during the two-day evidentiary hearing, and read the initial and reply post-hearing briefs.

Currently, in West Virginia counties outside the Verizon-WV service area, if a PSAP receives an emergency call from a CLEC, wireless, or VoIP customer, the only information received is that similar to Caller ID information. If the call is lost, there is no number to call back. Further, the location of the caller is unknown and valuable time is lost in responding to the caller (if a response can be made at all).

With full Phase I and II E911 functionality, county PSAPs will automatically receive information about the number from which each 911 call is made, the number to call back in case the call is disconnected or additional information is needed, and the location of the caller. The public safety, security and health benefits of fully enhanced E911 services are enormous to citizens currently living without such service. These benefits, however, also extend to all citizens of the State and to tourists as they travel throughout West Virginia.

The lives and property of West Virginia residents and visitors are substantially more at risk when located in the Counties of Mercer, Jefferson, Calhoun, Tucker, Grant, Hampshire, Pleasants, Wayne, Webster and McDowell as the result of the unavailability of E911 DBMS.

Preliminary Matter (1):

Whether the Commission should grant the Kanawha Metro motion to dismiss for lack of subject matter jurisdiction over this proceeding?

In its Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed March 9, 2007, Kanawha Metro argues that the Commission lacks subject matter jurisdiction to create and implement an E911 system because under *W. Va. Code* § 7-1-3cc only a county commission has that authority. Kanawha Metro also argues that the Commission lacks the authority to compel any county to participate in an E911 system without its agreement.

W. Va. Code § 7-1-3cc in relevant part states:

In addition to possessing the authority to establish an emergency telephone system pursuant to section four [§ 24-6-4], article six, chapter twenty-four of this code, a county commission or the county commissions of two or more counties may, instead, establish an enhanced emergency telephone system or convert an existing system to an enhanced emergency system. The establishment of such a system shall be subject to the provisions of article six [§§ 24-6-1 et seq.] of said chapter. The county commission may adopt rules after receiving recommendations from the West Virginia Enhanced 911 Council concerning the operation of all county emergency communications centers or emergency telephone systems centers in the state[.]

The statute is clear that a county commission or a group of county commissions may establish an E911 emergency telephone system or convert an existing system to an enhanced system, but *must* comply with the statutory requirements of *W. Va. Code* §§ 24-6-1, et seq., as specified in *W. Va. Code* §7-1-3cc.

W. Va. Code § 24-6-3(a) requires that the Commission develop a comprehensive enhanced 911 plan. In relevant part, the *Code* provision states: "The public service commission shall develop, review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems." Additionally, the Commission must review the construction and switching replacement projections of each operating telephone company . See *W. Va. Code* § 24-6-3(c).

Once a comprehensive plan is adopted by the Commission, county governments have the discretion to establish an emergency telephone system within their jurisdictions. However, the county plan must be consistent with the comprehensive plan. While there is no statutory mandate that there be a single system, the systems should be centralized. See *W. Va. Code* § 24-6-4. Subsequently, however, if a conflict arises among county commissions, among telephone

companies, between a telephone company or companies and a county commission or commissions, or between the department of public safety [West Virginia State Police] and any of the foregoing entities concerning an enhanced 911 system or systems, the Commission has been given the statutory duty by the Legislature to resolve those conflicts. Among the statutory remedies provided to the Commission is the authority to centralize any multiple enhanced emergency telephone systems. See *W. Va. Code* §24-6-7.

The statutory authority of the Commission to adopt and periodically review a comprehensive plan for establishing and maintaining emergency and enhanced emergency telephone systems is in addition to the authority of the Commission to regulate services and rates of public utilities. The general powers of the Commission to approve tariffs and rates under *W. Va. Code* § 24-2-3 extend to the tariffs and rates for E911 services provided by telecommunications carriers. See, *W. Va. Code* §§ 24-1-1(a), 24-2-2(a), 24-2-4a, 24-2-4b, and 24-2-4c.

In its motion to dismiss, Kanawha Metro challenges the Commission authority to compel county participation in an E911 system. The Commission authority to review and consider the Verizon-WV proposed statewide rates for E911 service does not diminish the opportunity for other providers to offer E911 service in the State. Section 253(a) of the Telecommunications Act of 1996 specifically states:

- (a) IN GENERAL.—No State or local statute, or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

Accordingly, all competitors remain free under federal law to enter the market to offer competing services.

Considering the evolution of this proceeding, the Commission has: (1) considered a proposed tariff filing by a regulated telecommunications provider; (2) created a task force and designated its responsibilities, all of which fall within the statutory mandate that the Commission adopt and periodically review a comprehensive plan establishing the technical and operational standards to be followed in establishing and maintaining emergency telephone systems and enhanced emergency telephone systems; (3) been advised concerning the reasonableness of the Verizon-proposed statewide DBMS rates and charges; and (4) considered these and other related issues in an extensive and well presented hearing by the parties.

The Commission finds that it has not only the authority, but the duty to establish, review, and update the comprehensive enhanced 911 plan and to review all utility rates and charges. Further, in exercising its statutory authority, the Commission is not compelling county participation in a statewide E911 system, as Kanawha Metro maintains in its motion to dismiss and Proposed Findings of Fact and Conclusions of Law. See, Kanawha Metro Proposed Finding of Fact 5. The Verizon-WV proposed E911 service is, in fact, not mandatory and not exclusive. The Kanawha Metro Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

Issues:

1. Whether the Commission should reject the Verizon-WV proposed statewide, phased-in tariff on the grounds that Verizon-WV did not file a Tariff Rule 42 Exhibit?

Kanawha Metro and Intrado claim that although cost data supporting the proposed E911 rate was filed with the Commission in this proceeding, Verizon-WV did not comply with *Rule 42* of the *Commission Rules for the Construction and Filing of Tariffs*, 150 C.S.R. 2 (*Tariff Rules*) in that total company financial data included in a *Tariff Rule 42* Exhibit was not filed as part of the proposed tariff change. Tr. Vol. II, p. 286. They also argue that Verizon-WV did not apply for or receive a waiver of such filing requirements. Tr. Vol II, p. 375.

The telecommunications industry, however, has not been regulated on a rate-base/rate-of-return basis for nearly two decades. Tr. Vol II, pp. 372-373. Consequently, telecommunications carriers routinely make filings without including full *Rule 42* Exhibits, pursuant to the *Commission Tariff Rules*. *Id.* As Staff witness Dannie Walker explained at hearing, Verizon-WV has not had a general rate case in West Virginia since 1984. Tr. Vol. II, pp. 372-373; *C & P Telephone Co. of W. Va.*, Case No. 84-747-T-42T, Final Order (Sept. 6, 1985).

Since that time and because of the tremendous changes within the telecommunications industry, the Commission has regulated Verizon-WV and other telecommunications providers in West Virginia by a series of incentive regulation plans, commonly known as alternative rate plans. Alternative rate plans allow for a relaxation of traditional rate-base/rate-of-return regulation in telecommunications. The State Legislature specifically endorsed this regulatory approach in 1990 when it adopted *W. Va. Code § 24-2-3c*, allowing the Commission to cease regulation of “workably competitive” telecommunications services. Subsection (e) of that statute states “[n]othing in this section limits the commission’s power to continue to engage in incentive or other innovative forms of rate-making in connection with its regulation of those services which it has not determined to be subject to workable competition.”

During the course of this proceeding, Verizon-WV, CAD and Staff in fact were negotiating in a different Commission proceeding, a joint petition for review and approval of a Market Transition Plan (“MTP”), an alternative rate plan governing the Verizon-WV services and rates through 2010. On December 15, 2006, the parties filed the joint petition, which the Commission thereafter approved. See, *Verizon West Virginia, Inc.*, Case No. 06-1935-T-PC, Commission Order (Dec. 21, 2006).

Under Paragraph 4(a)(I) of the MTP, the Commission allowed Verizon-WV to raise E911 rates to the level to be determined by the Commission in this proceeding. The same paragraph also provided for the four-step phase in of the Verizon-WV E911 rates. On page 2 of the December 21, 2006 Order approving the MTP Joint Stipulation, the Commission stated that any rate changes contemplated by the MTP would not become effective until after proper notice and future order of the Commission. Verizon-WV filed a copy of the required notice with the Commission on February 13, 2007. That notice read in pertinent part:

The MTP includes rate caps on basic and discretionary services. Allowed rate changes under the rate caps include:

Subject to phase-in provisions specified in the MTP, Verizon WV may (1) introduce a new pricing structure for Enhanced 911 services in accordance with any order that may be entered by the Commission in Case No. 04-0102-T-GI or related case concerning the provision of Enhanced 911 database management services, or (2) request by appropriate filing with the Commission that the rates and charges for Enhanced 911 services be increased, if necessary, to a level that is sufficient to recover the costs of providing such services.

Following the publication of the required notice and review of the proposed rate changes, on March 26, 2007, the Commission entered an Order approving the rate changes proposed in the MTP. *Verizon West Virginia Inc.*, Case No. 06-1935-T-PC, Commission Order (Mar. 26, 2007).

The record clearly shows that Kanawha Metro and Intrado have been afforded actual notice of the Verizon-WV proposed E911 rate changes as witnessed by their intervention and participation in this case. The same is true of the West Virginia E911 Council and numerous other county PSAPs that actually intervened or appeared as part of this proceeding. In addition, Kanawha County and other county PSAPs have had constructive notice of the same E911 rate changes through publication of the notice in Case No. 06-1935-T-PC. All parties willing to review cost data, subject to a confidentiality agreement, have had an opportunity to review that data and to file testimony rebutting the filings submitted by Verizon-WV. Kanawha Metro and Intrado have fully availed themselves of this opportunity.

The Verizon-WV tariff proposal and proposed rates have been properly noticed to the public, and submitted by Verizon-WV as required by the Commission in this proceeding. The review of the proposed tariff change for E911 service in this case is consistent with the MTP approved by the Commission on March 26, 2007. The Commission concludes that *Tariff Rule 42* does not create a procedural impediment preventing the review by the Commission of the Verizon-WV proposed rates for E911 service in this case.

The Commission may waive *Tariff Rule 42* filings and frequently does so for good cause shown.¹ *Tariff Rule 42*. Good cause exists because for many years, Verizon-WV has transitioned in the telecommunications market through a series of Commission approved plans in Case Nos.

¹ See *West Virginia-American Water Company and the Regional Development Authority of Charleston – Kanawha County*, Case No. 06-1858-W-CN-PC (Mar. 15, 2007); *City of Cameron*, Case No. 06-1487-W-CN (Jan. 23, 2007); *Cave Road Utilities, Inc.*, Case No. 06-1823-WS-ACN-PW (Jan. 22, 2007); *Town of Farmington*, Case No. 06-1491-W-CN, (Jan. 10, 2007); *Monongahela Power Company and the Potomac Edison Company each doing business as Allegheny Power*, consolidated Case Nos. 05-0402-E-CN and 05-0750-E-PC (Apr. 7, 2006). See also *Liberty Gap Wind Force, LLC*, Case No. 05-1740-E-CS (June 22, 2007).

83-259-T-SC, 90-613-T-PC, 94-0725-T-PC, 97-1461-T-PC, 00-0705-T-PC and 06-1935-T-PC. In addition, the Verizon-WV cost study and other evidence of record enables the Commission to make a determination as to the reasonableness of the Verizon-WV proposed rate.

2. Whether Verizon-WV proposed E911 tariff is reasonable with respect to cost?

Verizon-WV used a total service long-run incremental cost study, a forward-looking cost methodology, to develop proposed rates. For the past twenty years, the telecommunications industry has used forward-looking cost methodologies to develop prices for such services as 911, basic exchange service, vertical services, and data services. Tr. I, p. 94 The FCC requires the use of forward-looking costs for pricing unbundled network elements. Tr. II, p. 79.

Forward-looking cost study methodologies price a service based upon the total costs to provide a service, completely revising the entire pricing without reference to how those services previously were priced. In contrast, the Kanawha Metro cost analysis begins with complete acceptance of the historical rates and services Verizon-WV currently provides, and then attempts to identify those additional costs that Verizon-WV will incur to provide service outside of its existing incumbent service area. Metro Exh. 4, p. 4.

The bases of the Kanawha County claim are various critiques of the Verizon-WV cost study presented by the Kanawha Metro witness Morgan Winfree. However, each of these critiques was rebutted by the Verizon-WV witness. VZ Exh. R [Coates]. In addition, Kanawha Metro has never presented its position on what an appropriate rate should be.

The Verizon-WV tariff is reasonable when compared to its current tariff. Its proposed monthly rate for E911 service of \$182/1000 access lines averages out to approximately a 65% increase over the current rate of \$110/1000 access lines, although the actual increase varies by county. Under the terms of the Verizon-WV current tariff, however, the \$110/1000 line rate can be applied to all access lines: ILEC, wireless, and CLEC, but Verizon-WV has only been billing for ILEC lines. Tr. Vol. I, p. 66. If Verizon-WV applied the current tariff as written, the bills for certain PSAPs would more than double because there are now more wireless phones in West Virginia than land line phones. *Id.* This would result in an effective rate per land line double the current rate.

The Verizon-WV proposed E911 rate was developed by including wireless costs. As a result, bills to PSAPs will only be based on the number of land lines served by each PSAP, as clarified by Verizon-WV at hearing. Tr. Vol. II, pp. 50-52. Footnote 4 on page 14 of the proposed tariff sets forth the method by which PSAPs will be billed for E911 service each month. Verizon-WV Exh. 1. Under the original language of footnote 4, the number of land line and wireless calls or lines in each county are assumed to be equal during the initial billing period. However, in subsequent years, footnote 4 stated that billing would be in proportion to the ratio of wire-line calls to wireless calls. Tr. Vol. II, p. 45. At hearing, Verizon-WV agreed to modify the language of footnote 4 to maintain the assumed equal ratio of land line and wireless calls for billing purposes. Tr. Vol. II, pp. 50-52. Thus, billing under the proposed tariff will be based solely on the number of land lines, including CLEC lines, served by each PSAP. Tr. Vol. I, p. 69. This stands in contrast to the current tariff that